IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

MFA.No. 1028 of 2002()

OP.MV.566/1997 of MOTOR ACCIDENTS CLAIMS TRIBUNAL VADAKARA
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APPELLANTS: PETITIONERS
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1. **R.BALAN, S/O.RAMAN, 'BIJOYS' AGED 52 YEARS, VAIKKILASSERY P.O., VADAKARA TALUK. (HUSBAND OF THE DECEASED).**

2. **DIANA.B., D/O.BALAN, AGED 22 YEARS, BIJOYS,VAIKKILASSERY P.O., VADAKARA TALUK. (DAUGHTER OF THE DECEASED).**

3. **BIJOYLAL B., S/O.BALAN, 20 YEARS, 'BIJOYS' VAIKKILASSERY P.O. VADAKARA TALUK. (SON OF DECEASED)**

4. **SWEADA B., D/O.BALAN, 17 YEARS, 'BIJOYS' (MINOR) REP. BY FATHER AND NEXT FRIEND BALAN, VAIKKILASSERY P.O VADAKARA TALUK (DAUGHTER OF THE DECEASED).**

BY ADV. SRI.C.VALSALAN
SRI.C.D.SHAJU

RESPONDENTS: RESPONDENTS 2, 4 AND 5
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1. **BABU, S/O.GOPALAN, 28 YEARS, PUTHALATH THAZHAKUNI, MUYIPRA, KURINHALIYODE P.O., (DRIVER) N/L.NO. 4843/92.**

M.F.A. NO.1028/2002

2. V.K.SUKUMARAN, S/O.GOPALAN NAIR,
VATTAKKANDIYIL HOUSE, P.O.NADAKKUTHAZHA.

3. NEW INDIA ASSURANCE CO. LTD.,
BRANCH OFFICE, VADAKARA.

BY ADV. SRI.KKM.SHERIF
SRI.A.A.ZIYAD RAHMAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.1028 OF 2002

Dated 28th November, 2007

JUDGMENT

Koshy,J.

Wife of the first appellant sustained injuries in a motor accident. While she was travelling in an autorickshaw, the autorickshaw hit a pedestrian and the autorickshaw fell upside down. In the accident her index finger was crushed. Discharge summary shows that the deceased who was already a chronic patient was put conservative management following crush injuries on the right index finger. She was admitted on 6.12.1996 and discharged on 21.12.1996 after improvement of her renal functions. Again she was admitted on 20.1997 in the hospital and she was on maintainence haemodialysis. She suffered severe left ventricular dysfunction with cardiogenic shock and expired on 9.2.1997. The doctor who treated her was examined. He stated that discharge summary was issued by him. He has also stated that even though she was a chronic patient for renal failure, the accident must have worsen the illness and blood pressure also increased. But, he stated that injury sustained is not so serious. Even though accident might have worsen the illness, death is not the direct result of the accident. On 21.12.1996 there was improvement in renal function. Second time she was admitted only for kidney failure alone and she was

a dialysis patient of kidney. Certificate would show that she was hyper sensitive and was under continuous treatment. It is true that crush injury to right index finger added shock and it might have got contribution to the acceleration of the disease, but, It cannot be stated as the sole cause of death. The Tribunal did not grant compensation for the death, but only granted compensation for pain and suffering, hospitalisation expenses etc. amounting to Rs.54,100/=. The deceased was a High School Teacher and Rs.5,234/= was her monthly emoluments. Since index finger was crushed and no leave wages was granted and also considering the nature of injuries and acceleration of the disease etc. we are of the opinion that for the injuries, for the disability and consequential effects, an amount of Rs.15,000/= also should have been granted by the Tribunal. The above Rs.15,000/= should be deposited by the third respondent insurance company with 7.5% interest from the date of application till its deposit. On deposit of the amount, the appellants are allowed to withdraw the same in equal proportion.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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